

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Revision of the Commission's Rules to Ensure	)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency	)	
Calling Systems	)	
	)	
King County, Washington Request Concerning	)	
E911 Phase I Issues	)	
	)	

**COMMENTS**

**I. INTRODUCTION AND BACKGROUND**

Cal-One Cellular, LP ("Cal-One") by its attorneys and pursuant to the Public Notice in the above-captioned proceeding, hereby supports the Petition for Reconsideration<sup>1/</sup> jointly filed by Verizon Wireless, VoiceStream Wireless Corporation, Qwest Wireless, LLC, and Nextel Communications, Inc. with respect to the May 7, 2001 letter (the "May 7 Letter") issued by the Wireless Telecommunications Bureau ("Bureau").<sup>1/</sup> The May 7 Letter responded to the request (the "Request") of King County E-911 Program Office for clarification "whether the funding of network and database components of Phase I service, and the interface of these components to the

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<sup>1/</sup>Petition for Reconsideration in the above-captioned proceeding, filed June 6, 2001 ("Joint Petition").

<sup>2/</sup>See Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau to Ms. Marlys R. Davis, E 911 Program Manager, King County E-911 Program Office, Department of Information and Administrative Services re: King County Washington Request Concerning E911 Phase I Issues, May 7, 2001.

existing 911 system [is] the responsibility of the wireless carriers or the [Public Safety Answering Points] PSAPs.” In the May 7 Letter the Bureau interpreted the Section 20.18(d) (1) of the rules to mandate that carriers “deliver [Phase I] information to the equipment that analyzes and distributes it. – i.e., to the input to the 911 Selective Router.”<sup>1/</sup> Further, the Bureau held carriers financially responsible for purchasing trunks between the MSC and the selective router, trunks directly to the ALI database, and any third party data base facilities (as applicable).<sup>1/</sup> Finally, the Bureau found that PSAPs are generally responsible for upgrades to the selective router, trunking from the selective router to the PSAP, and PSAP customer premises equipment (“CPE”).<sup>1/</sup>

In response to the May 7 Letter, the Joint Petition was filed in order to urge the Bureau to reconsider its findings. As shown herein, the Bureau should grant the Joint Petition. The Bureau must reconsider its conclusion that wireless carriers are responsible for certain costs of the E911 Wireline Network and hold instead, based on the record in this proceeding and on Commission rules and precedent that the appropriate demarcation point for determining a “PSAP’s costs” under Section 20.18(j) is the wireless carrier’s mobile switching center (“MSC”).

## II. DISCUSSION

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<sup>3/</sup>May 7 Letter at 4.

<sup>4/</sup>*Id.* at 5.

<sup>5/</sup>*Id.* at 5-6.

The Bureau bases its decision on the erroneous assumption that the E911 Wireline Network does not include the trunkline from the wireless carrier's MSC to the 911 Selective Router.

As a result of the Bureau's decision, wireless carriers are responsible for the costs of all hardware and software components and functionalities that precede the 911 Selective Router, including the trunk from the carrier's MSC to the 911 Selective Router, and any databases, interface devices, and trunk lines that may be needed should a Non-Call Path Associated Signaling or Hybrid Call Path Associated Signaling methodology for delivering E911 Phase I data to the PSAP be selected. PSAPs must bear the costs of maintaining and/or upgrading the E911 components and functionalities beyond the input to the 911 Selective Router, including the 911 Selective Router itself, the trunks between the 911 Selective Router and the PSAP, the Automatic Location Identification database, and the PSAP customer premises equipment (CPE). The Joint Petitioners have demonstrated that this is unsupported by Commission rules and precedent.

A. The Bureau has Failed to Meet the Standards Required Under the Administrative Procedure Act for Interpreting Commission Rules.

The Bureau's decision is unsupported in Commission rules and precedent and can be effected only via the full Commission in a notice and comment rulemaking. The Joint Petitioners point out that the Administrative Procedure Act requires the Bureau to consider and respond to significant comments in the record, which the Bureau did not do.<sup>1/</sup> Moreover, Joint Petitioners' argue correctly that the Bureau "cannot eliminate the meaning of the Commission's rules and supply

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<sup>6/</sup>See Joint Petition at 4-8.

new content through ‘interpretations.’”<sup>1/</sup> As Joint Petitioners emphasize, the May 7 Letter does not merely interpret or clarify the rule. Instead the Bureau, in the May 7 Letter, makes a new policy choice of who should bear the costs of E911 Wireline Network, contrary to the Commission’s prior determination carriers and PSAP are to jointly share costs.<sup>1/</sup> This clearly goes beyond the scope of the Bureau’s delegated authority to interpret the Commission’s rules. As such the Bureau should reconsider its decision and issue a new interpretation consistent with the Commission’s rules and policies.

B. The May 7 Letter Discriminates Unlawfully Against Wireless Carriers, as Compared to Wireline Carriers, With Respect to The Provision of E911 Services.

Joint Petitioners point out that pursuant to the May 7 Letter, wireless carriers have the responsibility for the cost of transporting E911 Phase I information from their switches to the 911 selective router. For incumbent wireline carriers, on the other hand, transport of 911 calls between their switches and 911 selective router is paid for by the PSAP.

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<sup>1/</sup>Joint Petition at 8, *citing Caruso v. Blockbuster-Sony Music Entertainment*, 174 F.3d 166, 174-75 (3d Cir. 1999) (agency cannot adopt vague requirements “and then give it concrete form only through less formal ‘interpretations’”) (*quoting Paralyzed Veterans of America v. D.C. Arena L.P.*, 117 F. 3d 579, 584 (D.C. Cir. 1997)).

<sup>8/</sup>*See* Joint Petition at 10, *citing* Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Second Memorandum Opinion and Order*, 14 FCC Rcd. 20850, 20886-887 (1999) (“Second MO&O”).

Cal-One has a sister, wireline company, Siskyou Telephone Company (“Siskyou”), whose experience in implementing E911, when contrasted with the treatment which would be afforded to wireline carriers under the Bureau’s interpretation, highlights the unjustified disparity in treatment between wireline and wireless carriers. When implementing E911 features upon PSAP request, Siskyou has provided a service to PSAPs for which PSAPs have paid. Siskyou has not been responsible financially for the provision of E911 services. The PSAP pays for and is reimbursed by the State Telecommunications Division for “necessary and reasonable costs associated with the planning, implementation and maintenance of a State approved 911 system.”<sup>9/</sup> Expenses eligible for reimbursement generally include telecommunications equipment, systems and services that facilitate 911 call delivery to a PSAP. Specifically, Chapter III of the California 911 Manual identifies the following system features as eligible under the State’s 911 funding program.

- Incoming 911 lines or trunks.
- Incoming emergency backup seven-digit lines, when properly listed in the white pages of the telephone directory.
- Common Control equipment necessary to provide ANI, ALI and interconnectivity to 1A2 Key telephone system, Electronic key telephone systems and ACD systems serving a PSAP.
- Telephone sets involved with primary interrogation and dispatch positions only – not backup or “standby” positions.
- 1A2 Key telephone systems, including telephone answering consoles, when appropriate and necessary to achieve full 911 call processing functionality.
- Electronic key telephone systems, including telephone answering consoles, when appropriate to achieve full 911 call processing functionality.
- Automatic Call Distributor (ACD) systems, including telephone answering consoles, supervisor consoles and

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<sup>9/</sup>See [www.telecom.ca.gov/911 manual](http://www.telecom.ca.gov/911%20manual).

necessary accessory equipment and/or adjuncts, when appropriate to achieve full 911 processing functionality.

- “Intelligent workstations” that incorporate all 911 voice, data, ANI, ALI and other telecommunication functions, including TDD/TTY operating capability, into a single computer-type telephone position console.
- Selective Routing
- Automatic Number Identification
- Automatic Location Identification
- System interface with Computer Aided Dispatch systems and reasonable software costs to facilitate the transfer of a 911 call to another agency.
- System and/or line features that facilitate the transfer of a 911 call to another agency.
- Circuitry and switches to activate 911 Alternate Answering arrangements.
- Call detail teleprinter. In lieu of this, the reasonable cost of software to facilitate direct input of 911 call detail into a Personal Computer.
- Uninterruptable Power Supply (UPS) battery system to ensure continuance of 911 calls in progress and short term power supply in the event of commercial power failure. In lieu of this, funding for a prorated portion of a larger UPS system that serves systems beyond the 911 telecommunications system. Such funding, however, will not exceed the cost of a UPS system designed for the 911 telephone system.
- Toll charges directly associated with the transfer of 911 calls to other agencies.
- Remote location printers associated with some 911 systems that may transfer the ALI readout to a secondary PSAP location.
- Telecommunication Device for the Deaf (TDD/TTY) operating capability. Such capability includes keyboards that work in conjunction with telephone answering consoles.
- Stand-alone Call Sequencer systems in PSAP centers where large volumes of 911 traffic and other heavy traffic is processed on many 911 consoles.
- Personnel expenses and certain collateral expenses, incurred by the designated County 911 Coordinator in each county that are associated with ongoing maintenance and necessary revisions to the 911 Master Street Address Guide.

- Personnel expenses (overtime only) associated with initial equipment operation training when a new PSAP 911 system is installed.
- Overtime pay when necessary to train off-shift personnel on the use and operation of a new 911 telephone system.
- Computer access to the MSAG(s) by designated 911 County Coordinators. Eligible expenses include the cost of a business line and modem (or in some cases, a dedicated private line) and a reasonable cost of Personal Computer software to effectively communicate with Pacific Bell's "County On-Line" and/or General Telephone's "Street Smart" MSAG access feature. The PC is not eligible for funding.<sup>10/</sup>

This is a list of the system features identified as "eligible costs" under the State's 911 funding program. Upon examination of the list, one can see that the state is responsible for funding everything from software, to meetings, to monthly, recurring transport charges associated with its provision of E911 services via wireline telecommunications network in the California. It is inconceivable to shift the burden of funding this public service to the carriers in the case of wireless carriers' provision of E911 to the public. Cal-One urges the Bureau to promptly reconsider its decision.

- The Bureau Erred with Respect to a Key Fact.

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<sup>10/</sup>See *id.*

The Joint Petitioners highlight the fact that the May 7 Letter is based on a false assumption that the E911 wireline network – provisioned by the local exchange carrier (“LEC”) for the PSAP – does not include trunks between the MSC and 911 selective router.<sup>11/</sup> Joint Petitioners further explain that “the E911 Wireline Network, which is LEC-provisioned for the PSAP’s benefit and for which the PSAP bears the costs, also includes trunks from the MSC and/or LEC end office to the 911 selective router.”<sup>12/</sup> The record in this proceeding and the Bureau’s prior understanding of this fact is contrary to the Bureau’s factual description of the E911 Wireline Network. This error provides further evidence that the Bureau should promptly reconsider its decision and hold instead that the demarcation point is the wireless carrier’s MSC.

Cal-One urges the Bureau to reconsider its decision by recognizing established Commission rules and precedents. The Bureau cannot effectively amend the rules through an interpretation that does not conform to the purpose and wording of the rule, or to the Commission’s intent at the time the rules were promulgated.<sup>13/</sup> Cal-One further agrees with Joint Petitioners that the Bureau’s decision, and the stated reasons for that decision, are the type of policy considerations requiring a notice and comment rulemaking proceeding by the full Commission. Moreover, Joint Petitioners

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<sup>11/</sup>Joint Petition at 6.

<sup>12/</sup>*Id.*, footnote omitted.

<sup>13/</sup>*See, e.g., Southwestern Bell v. FCC*, 28 F.3d 165, 169 (D.C. Cir. 1994) (Commission “bound to follow those statements until such time as it altered them through another rulemaking”).



aptly explain that wireless carriers' ability to recover costs from customers is irrelevant to the issue raised by King County, and the Bureau's determination in this regard is without support in the record and the rules.

D. The Bureau Must Consider the Impact of its Decision on Small and Rural Carriers

Unlike the parties which formally seek reconsideration, Cal-One is a small, rural cellular carrier. The Cal-One subscriber base, over which to spread the costs of compliance with federal mandates such as CALEA, and E911 Phase II, are extremely limited. While the value of these services cannot merely be measured in economic terms, cost of these services must be. Complying with these costs, especially in a rural mountainous application such as in California RSA 1 where Cal-One operates, represents a substantial burden to the carrier. The addition of further non-network costs, such as the cost of transport to the selective router, substantially increases the cost of compliance. As shown above, there is no legal basis upon which to place these costs with the wireless carrier. Cal-One respectfully submits that there is also a very real economic basis for not doing so, especially in the rural applications where the costs of such facilities are even higher than in the urban areas.

IV. CONCLUSION

The Bureau's decision is inconsistent with the Commission's rules and underlying orders and is beyond the scope of the Bureau's delegated authority. The Bureau should grant the Joint Petition expeditiously, reconsider its decision, and find instead, consistent with Commission rules and policy, that the proper demarcation point is the MSC.

Respectfully submitted,

CAL ONE CELLULAR, L.P.

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July 30, 2001

CERTIFICATE OF SERVICE

I, LaWanda Y. Tyson, a secretary with the law firm of Kurtis & Associates, P.C., do hereby certify that I have this 30<sup>th</sup> day of July 2001, had copies of the foregoing "Petition for Reconsideration of the Letter to King County" sent via hand delivery to the following:

John T. Scott, III  
Vice President and Deputy General

Brian T. O'Connor  
Robert A. Calaff